

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

FRANK N. MANDIGO, PETER W. ROBINSON,
DEREK E. TYLER, ANDREAS BOEGEL,
HANS-ACHIM KUHN, FRANK M. KEPPELER
and JOERG SEEGER

Plaintiff,

v.

HONORABLE DAVID J. KAPPOS,
In his official capacity as UNDER SECRETARY
OF COMMERCE FOR INTELLECTUAL
PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND
TRADEMARK OFFICE

Defendant

Civil Action No. 1:12cv1193

CMH/IDD

**COMPLAINT FOR REVERSAL OF DECISION OF
THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT TRIAL AND APPEAL BOARD**

Plaintiffs, Frank N. Mandigo, Peter W. Robinson, Derek E. Tyler, Andreas Boegel,
Hans-Achim Kuhn, Frank M. Keppeler, and Joerg Seeger allege as follows:

1. This civil action is brought pursuant to 35 U.S.C. § 145 against the Director of the United States Patent and Trademark Office seeking a judgment that Plaintiffs are entitled to receive a patent for the invention specified in the claims involved in a decision of the Board of Patent Appeals and Interferences (now known as and referred to hereinafter as the Patent Trial and Appeal Board").

THE PARTIES

2. Plaintiff, Frank N. Mandigo, a citizen of the United States, is an inventor of U.S. Patent Application Serial No. 11/588,111 ("the '111 patent application"), filed October 26, 2006, and entitled "Copper Alloy Containing Cobalt, Nickel and Silicon." A true and correct copy of the '111 patent application (as published) is attached hereto as Exhibit A.

3. Plaintiff, Peter W. Robinson, a citizen of the United Kingdom, is an inventor of U.S. Patent Application Serial No. 11/588,111 ("the '111 patent application"), filed October 26, 2006, and entitled "Copper Alloy Containing Cobalt, Nickel and Silicon." A true and correct copy of the '111 patent application (as published) is attached hereto as Exhibit A.

4. Plaintiff, Derek E. Tyler, a citizen of the United States, is an inventor of U.S. Patent Application Serial No. 11/588,111 ("the '111 patent application"), filed October 26, 2006, and entitled "Copper Alloy Containing Cobalt, Nickel and Silicon." A true and correct copy of the '111 patent application (as published) is attached hereto as Exhibit A.

5. Plaintiff, Andreas Boegel, a citizen of Germany, is an inventor of U.S. Patent Application Serial No. 11/588,111 ("the '111 patent application"), filed October 26, 2006, and entitled "Copper Alloy Containing Cobalt, Nickel and Silicon." A true and correct copy of the '111 patent application (as published) is attached hereto as Exhibit A.

6. Plaintiff, Hans-Achim Kuhn, a citizen of Germany, is an inventor of U.S. Patent Application Serial No. 11/588,111 ("the '111 patent application"), filed October 26, 2006, and entitled "Copper Alloy Containing Cobalt, Nickel and Silicon." A true and correct copy of the '111 patent application (as published) is attached hereto as Exhibit A.

7. Plaintiff, Frank M. Keppeler, a citizen of Germany, is an inventor of U.S. Patent Application Serial No. 11/588,111 ("the '111 patent application"), filed October 26, 2006, and entitled "Copper Alloy Containing Cobalt, Nickel and Silicon." A true and correct copy of the '111 patent application (as published) is attached hereto as Exhibit A.

8. Plaintiff, Joerg Seeger, a citizen of Germany, is an inventor of U.S. Patent Application Serial No. 11/588,111 ("the '111 patent application"), filed October 26, 2006, and entitled "Copper Alloy Containing Cobalt, Nickel and Silicon." A true and correct copy of the '111 patent application (as published) is attached hereto as Exhibit A.

9. The application has been assigned in part to GBC Metals, LLC and in part to Wieland-Werke AG by virtue of the Assignment chain listed below. GBC Metals, LLC, is a limited liability company organized under the laws of the State of Delaware. Wieland-Werke AG, is a corporation organized under the laws of Germany.

- 1) Inventors to Olin Corporation and Wieland-Werke AG
(S/N 10/610,433 – parent application)
Recorded December 11, 2003 (Reel 014773/Frame 0460)
- 2) Olin Corporation to Global Metals, LLC (Acquisition)
Recorded November 19, 2007 (Reel 020125/Frame 0985)
- 3) Global Metals, LLC to GBC Metals, LLC (Name Change)
Recorded April 3, 2008 (Reel 020741/Frame 0549)

10. Defendant David J. Kappos is the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. Director Kappos is sued in his official capacity as Director of the United States Patent and Trademark Office pursuant to 35 U.S.C. § 145.

Jurisdiction and Venue

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because this is a civil action arising under the laws of the United States and relating to patents, including the United States Patent Act, 35 U.S.C. § 101 *et seq.* This court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 35 U.S.C. § 145 (as amended September 16, 2011, by the America Invents Act).

12. This Court has authority to review the decision of the Patent Trial and Appeal Board and to authorize the Director of the United States Patent and Trademark Office to issue Plaintiffs a patent pursuant to 35 U.S.C. § 145.

13. Venue is proper in this District pursuant to 35 U.S.C. § 145 and 28 U.S.C. § 1391(e).

FACTS GIVING RISE TO THE COMPLAINT

14. The '111 application is directed to copper alloy containing cobalt, nickel and silicon.

15. Claims 60-69 in the '111 patent application were rejected by the patent examiner in a final Office Action dated November 26, 2008.

16. The Plaintiff inventors appealed the rejection of the claims in the '111 patent application to the Patent Trial and Appeal Board in Appeal No. 2010-012290. In a decision dated May 10, 2012, the Patent Trial and Appeal Board affirmed the patent examiner's rejection

17. Plaintiffs then requested a rehearing by the Patent Trial and Appeal Board. In a decision dated August 24, 2012, the Patent Trial and Appeal Board declined to modify its prior decision.

18. Plaintiffs are dissatisfied with the decision of the Patent Trial and Appeal Board in Appeal No. 2010-012290.

19. Upon information and belief, the Patent Trial and Appeal Board committed a clear error, *inter alia*, affirming the rejection of the claims as being obvious in view of Fujiwara JP09-20943 (claims 60-64) and Fujiwara JP09-20943, in combination with Hirai JP11-222641 (claims 65-69).

20. This action has been commenced within two months of the decision of the Patent Trial and Appeal Board on the Plaintiffs' request for rehearing.

21. No appeal to the United States Court of Appeals for the Federal Circuit has been taken from the decision of the Patent Trial and Appeal Board.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare, adjudge, and decree that Plaintiffs are entitled to receive a patent for the subject matter claimed in the '111 patent application.
- B. Order the Director of the United States Patent and Trademark Office to issue a patent for the subject matter claimed in the '111 patent application, pursuant to 35 U.S.C. § 145.

- C. Grant such other and further relief as the nature of the case may admit or require and as may be just and equitable.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, P.L.C.

Dated: October 24, 2012

By:


David R. Haarz

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